

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

50912

FILE: B-179875

DATE: July 17, 1975

97371

MATTER OF: Sperry Rand Corporation, Univac Division

DIGEST:

Previous decision sustaining selection of higher-priced proposal on the basis of technical superiority is sustained, in the absence of new evidence requiring a different conclusion. However, protester's charges concerning impartiality and adequacy of evaluation criteria and procedures will be considered in connection with audit review function. B-179875, September 12, 1974, affirmed.

By decision B-179875, September 12, 1974, we denied the protest of the Univac Division of Sperry Rand Corporation (Univac), against the award of a contract to Raytheon, Incorporated (Raytheon), under request for proposals (RFP) No. N00024-74-3095(S), issued by the Naval Ships Systems Command, for signal data converters. By its letter of November 27, 1974, Univac requested reconsideration of our decision.

In order to put this matter in perspective, a brief discussion of our previous decision is necessary. The contract under consideration resulted from a request for proposals issued September 7, 1973, and was the third solicitation issued for the procurement. Raytheon, Univac, and Ocean Technology Incorporated (OTI) submitted proposals, and after negotiations and evaluation received technical scores of 91.58, 66.16, and 48.94, respectively. Although Univac submitted the lowest priced proposal, Raytheon was selected for award because technical merit was weighted 2.5 times greater than price. Univac's basic contention was that the stated evaluation criteria in the RFP did not adequately inform prospective offerors of the factors actually controlling in the evaluation and selection, and failed to apprise prospective offerors of the numerical ratings and weights assigned to and applied in the evaluation of the respective criteria, particularly the price criterion. With regard to the evaluation criteria, Univac also contended that undisclosed and improper "baseline" criteria were the controlling factors rather than listed RFP criteria. In addition to questioning the validity of certain technical conclusions, Univac also questioned the impartiality of the evaluation criteria and procedure, referring to the fact that the evaluation plan was established after cancellation of the earlier solicitations and after the agency was aware of the basic features of both the Raytheon and Univac proposals. Upon consideration of these issues, we concluded that they had not been supported and, therefore, denied the protest.

It is our view that Univac's request for reconsideration is based primarily upon contentions previously considered and rejected in our prior decision. However, since certain matters may not have been specifically addressed in our prior decision in the context referred to in the request for reconsideration, they are considered below. In our prior decision we stated that certain of Univac's objections to the evaluation criteria to our Office were untimely, as they should have been raised prior to the closing date for receipt of proposals. Univac has asked for reconsideration of this point on the basis that it did not object to the stated evaluation criteria and the allowance of only 7 days for proposal submission prior to the closing date as it was assured by responsible Navy officials that the second RFP was canceled only for changes in the delivery schedule and requirements and there was no basic change in award criteria. According to Univac, it later learned that the primary reason for issuing the third RFP was to justify an award to Raytheon and that there was a substantial variance between the general criteria stated in the RFP and the detailed criteria actually used in the evaluation. Univac also questions the propriety of the evaluation procedure. It contends that the "undisclosed" detailed evaluation criteria, including the relative minor weight accorded price, were prepared after the key Navy technical personnel knew from the second RFP proposals that they preferred Raytheon's SDC and knew the basic equipment that would be offered by Univac and Raytheon, including the number and type of functions, the modifications required, and the status of environmental testing and service approval of the basic equipment. According to Univac, the Navy prepared and applied the evaluation criteria so only Raytheon could win. In this connection, Univac strongly disagrees with the statement in our decision to the effect that it had presented no evidence to substantiate its charge that the evaluation criteria were designed to favor Raytheon. Upon reconsideration we agree with Univac that our prior statement was not justified on the basis of the record.

The Navy has responded by denying that Navy officials assured Univac that there was no basic change in the award criteria in the third RFP, pointing out that the canceled RFP provided for evaluation based upon "price, and other factors," while the third RFP provided a significant listing of criteria of which price was only one factor. Furthermore, the Navy denies any preconceived intention to award to Raytheon. The Navy asserts that no decision in this regard was made until all the requirements were identified in the third RFP and proposals were evaluated. It is the Navy's position that the criteria reflected what was considered necessary to fulfill program needs and not to fit Raytheon's equipment. In this connection, the Navy points out three of the four members of the technical proposal evaluation panel did not evaluate the canceled RFP proposals and, in addition, two individuals responsible for drafting the third RFP criteria did not participate in the earlier evaluation.

Since our Office was not privy to any discussions between the Navy and Univac concerning the reasons for canceling the second RFP and issuing the third, we are unable to resolve the dispute as to the substance of such conversations. With regard to the contention as to the inadequacy of the stated evaluation criteria in relation to the actual criteria controlling in the evaluation and selection of Raytheon, we have previously considered this argument and concluded that, while relative weights of the technical criteria should have been more accurately stated, we did not find that such defect had a significant prejudicial effect on Univac in the overall scoring.

In its request for reconsideration Univac cites our decision Signatron, Inc., B-181782, December 26, 1974 (54 Comp. Gen. ___), aff'd B-181782, April 2, 1975. Univac states that the similarity of the evaluation procedure found defective in Signatron to that used by the Navy here is "rather striking" * * * because Signatron, like Sperry Univac was on a par with its competition on the technical requirements, was low in price but lost the competition because of undisclosed detail evaluation factors." We considered the RFP defective in Signatron because the record showed that the agency had a technical preference for a Digital Simulation System with duplex operation, although the RFP statement of work did not require offerors to furnish duplex operation. As a result, an offeror proposing only a simplex system was prejudiced in the evaluation. Here the RFP did not contain any such misleading statement of the agency's requirements or preferences. Moreover, the Signatron RFP failed to set forth the relative importance of price vis-a-vis the other factors. In this case, while the RFP did not state the precise weight for price, it did adequately advise offerors that relative to "other factors" price would not be the dominant consideration in the award selection. Therefore, we do not believe Signatron and this case are similar as contended. Nor do we believe that Univac has presented any new information requiring different conclusions and, therefore, we adhere to our earlier position in this regard for the reasons stated in the decision of September 12, 1974.

Furthermore, as noted above, the Navy has denied that the criteria as stated and applied were intended to or did in fact favor Raytheon. We previously considered the respective arguments in this regard at length and concluded that there was no basis for our Office to find that the procurement was conducted other than in an impartial manner. While we said that Univac had presented no evidence in this regard, we should have stated that such evidence

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as was presented was not sufficient to support its charge in view of the controverting evidence cited by the Navy. We are pleased to correct this statement.

Of course, our initial decision, as well as the affirmation herein, was based upon the written record as presented by the respective parties. As indicated, we were unable to find sufficient evidence in the record to sustain the protest. On the other hand, we recognize that the evidence presented by Univac raises serious questions as to the impartiality and adequacy of the evaluation criteria and procedures. In view thereof, we believe that these charges should be further considered under our audit review function rather than in the context of a bid protest and the file is being retained for that purpose.

(for the)

Paul B. Henshling
Comptroller General
of the United States